



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MLW*

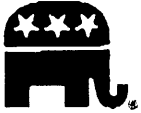
DATE: OCTOBER 3, 2006

SUBJECT: COMMENT ON DRAFT AO 2006-24

Transmitted herewith is a timely submitted comment by Thomas J. Josefiak, Chief Counsel for the Republican National Committee, regarding the above-captioned matter.

Proposed Advisory Opinion 2006-24 is on the agenda for Wednesday, October 4, 2006.

Attachment



Republican
National
Committee

Counsel's Office

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2006 OCT -3 A 11:48

October 3, 2006

By Fax

Commission Secretary &
Rosemary C. Smith, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: The Republican National Committee's Comment on Draft Advisory
Opinion 2006-24

Dear Ms. Smith:

The Republican National Committee ("RNC") writes to comment on the Federal Election Commission's (the "Commission") Draft Advisory Opinion 2006-24, dated September 29, 2006, and consisting of two draft opinions, AO Draft A and AO Draft B. The RNC supports Draft B because it is consistent with FECA's statutory text, legislative history, and the Commission's past precedent and practice with respect to recount funds, both before and after the Bipartisan Campaign Reform Act's ("BCRA's") enactment.

Draft B states that the restrictions of 2 U.S.C. § 441i(e)(1)(A), outside of the statute's source prohibitions, do not apply to federal candidate or state party recount funds because related recount activities are not "in connection with an election for Federal office." As Draft B notes, the statutory definition of elections excludes recounts – a purposeful exclusion that the Commission made clear in the Explanation and Justification that accompanied the original recount regulations. *Draft AO 2006-24*, Draft B at 6-10 (*citations omitted*). As Draft B also notes, Congress was well aware of the Commission's treatment of recount funds during BCRA's enactment, and did nothing to suggest any such change with respect to the treatment of such funds. *See Lorillard v. Pons*, 434 U.S. 575 (1978); *Fla. Nat'l Guard v. Fed. Labor Relations Auth.*, 699 F.2d 1082 (11th Cir. 1983) ("Congressional silence in the Act indicates acceptance of the [agency's] prior practice"). Draft B also accurately reflects the Commission's practical application of the recount regulations in its AO's. *Draft AO 2006-24*, Draft B at 7-10 (*citing AO 1978-92, 1998-26.*)

The Commission should adopt Advisory Opinion Draft B and, apart from the source prohibitions, exempt recount funds from BCRA's regulatory scope.

Respectfully submitted,



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